

which they reside, or in nearby communities, that will contribute to the general welfare of the community;

(c) An ability to administer a program that moves eligible participants into unsubsidized employment;

(d) An ability to move participants with multiple barriers to employment into unsubsidized employment;

(e) An ability to coordinate with other organizations at the State and local levels, including the One-Stop Delivery System;

(f) An ability to properly manage the program, including its plan for fiscal management of the SCSEP program;

(g) An ability to minimize program disruption for current participants if there is a change in project sponsor and/or location, and its plan for minimizing disruptions; and

(h) Any additional criteria that the Secretary of Labor deems appropriate in order to minimize disruptions for current participants.

§ 641.440 What are the responsibility conditions that an applicant must meet?

Each applicant must meet each of the listed responsibility “tests” by not having committed any of the acts of misfeasance or malfeasance described in § 641.440(a)–(n) of this section.

(a) The Department has been unable to recover a debt from the applicant, whether incurred by the applicant or by one of its subgrantees or sub-contractors, or the applicant has failed to comply with a debt repayment plan to which it agreed. In this context, a debt is established by final agency action, followed by three demand letters to the applicant, without payment in full by the applicant.

(b) Established fraud or criminal activity of a significant nature within the applicant’s organization.

(c) Serious administrative deficiencies identified by the Department, such as failure to maintain a financial management system as required by Federal regulations.

(d) Willful obstruction of the auditing or monitoring process.

(e) Failure to provide services to applicants as agreed to in a current or recent grant or to meet applicable performance measures.

(f) Failure to correct deficiencies brought to the grantee’s attention in writing as a result of monitoring activities, reviews, assessments, or other activities.

(g) Failure to return a grant closeout package or outstanding advances within 90 days after the grant expiration date or receipt of closeout package, whichever is later, unless an extension has been requested and granted.

(h) Failure to submit required reports.

(i) Failure to properly report and dispose of Government property as instructed by the Department.

(j) Failure to have maintained effective cash management or cost controls resulting in excess cash on hand.

(k) Failure to ensure that a subgrantee complies with applicable audit requirements, including OMB Circular A–133 audit requirements specified at 20 CFR 667.200(b) and § 641.821.

(l) Failure to audit a subgrantee within the period required under § 641.821.

(m) Final disallowed costs in excess of five percent of the grant or contract award if, in the judgment of the Grant Officer, the disallowances are egregious findings.

(n) Failure to establish a mechanism to resolve a subgrantee’s audit in a timely fashion.

§ 641.450 Are there responsibility conditions that alone will disqualify an applicant?

(a) Yes, an applicant may be disqualified if either of the first two responsibility tests listed in § 641.440 is not met.

(b) The remainder of the responsibility tests listed in § 641.440 require a substantial or persistent failure (for 2 or more consecutive years).

(c) The second responsibility test addresses “fraud or criminal activity of a significant nature.” The existence of significant fraud or criminal activity will be determined by the Department and typically will include willful or grossly negligent disregard for the use, handling, or other fiduciary duties of Federal funding where the grantee has no effective systems, checks, or safeguards to detect or prevent fraud or criminal activity. Additionally, significant fraud or criminal activity will

typically include coordinated patterns or behaviors that pervade a grantee's administration or are focused at the higher levels of a grantee's management or authority. To be consistent with the OAA section 514(d)(4)(B), this determination will be made on a case-by-case basis regardless of what party identifies the alleged fraud or criminal activity.

§ 641.460 How will the Department examine the responsibility of eligible entities?

The Department will conduct a review of available records to assess each applicant's overall fiscal and administrative ability to manage Federal funds. The Department's responsibility review may consider any available information, including the organization's history with regard to the management of other grants awarded by the Department or by other Federal agencies. (OAA sec. 514(d)(1) and (d)(2)).

§ 641.465 Under what circumstances may the Department reject an application?

(a) The Department may question any proposed project component of an application if it believes that the component will not serve the purposes of the SCSEP program. The Department may reject the application if the applicant does not submit or negotiate an acceptable alternative.

(b) The Department may reject any application that the Grant Officer determines unacceptable based on the content of the application, rating score, past performance, fiscal management, or any other factor the Grant Officer believes serves the best interest of the program, including the application's comparative rating in a competition.

§ 641.470 What happens if an applicant's application is rejected?

(a) Any entity whose application is rejected in whole or in part will be provided a timely notice as well as an explanation, or debriefing, of the Department's basis for its rejection. Notifications will include an explanation of the Department's decision and suggestions as to how to improve the applicant's position for future competitions.

(b) Incumbent grantees will not have an opportunity to cure in an open competition because that will create an inequity in favor of incumbents which already have opportunities to correct deficiencies through technical assistance, provided by the Department, under OAA sec. 514(e)(2)(A).

(c) If the Administrative Law Judge (ALJ) rules that the organization should have been selected, in whole or in part, and the organization continues to meet the requirements of this part, the matter must be remanded to the Grant Officer. The Grant Officer must, within 10 working days, determine whether the slots which are the subject of the ALJ's decision will be awarded, in whole or in part, to the organization and the timing of the award. In making this determination, the Grant Officer must take into account disruption to participants, disruption to grantees and the operational needs of the SCSEP. The Grant Officer must return the decision to the ALJ for review. In the event that the Grant Officer determines that it is not feasible, the successful appellant will be awarded its bid preparation costs or a pro rata share of those costs if Grant Officer's finding applies to only a portion of the funds that would be awarded to the successful appellant. An applicant so selected is not entitled to the full grant amount but will only receive the funds remaining in the grant that have not been expended by the current grantee through its operation of the grant and its subsequent closeout. The available remedy in an SCSEP non-selection appeal is the right to be selected in the future as an SCSEP grantee for the remainder of the current grant cycle. Neither retroactive nor immediately effective selection status may be awarded as relief in a non-selection appeal under this section and § 641.900.

Any organization selected and/or funded as an SCSEP grantee is subject to having its slots reduced or to being removed as an SCSEP grantee of an ALJ decision so orders. The Grant Officer provides instructions on transition and closeout to both the newly designated grantee and to the grantee whose slots are affected or which is being removed.